

Municipal Heritage Committee Report

Report Number:	KLMHC2021-51
Meeting Date:	December 2, 2021
Title:	Amendment of Heritage Delegated Authority By-law – Extension of Timelines and Execution of Heritage Easement Agreements
Description:	Proposed amendment to By-law 2019-154 (Delegate Authority Heritage) to delegate authority for the approval of timeline extensions and waivers to staff and for the negotiation of heritage easement agreements
Author and Title:	Emily Turner, Economic Development Officer – Heritage Planning

Recommendations:

That Report KLMHC2021-51, **Amendment of Heritage Delegated Authority By-law – Extension of Timelines and Execution of Heritage Easement Agreements**, be received;

That the proposed amendment to By-law 2019-154 be endorsed; and

That this recommendation be forwarded to Council for approval.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

The amendments to the Ontario Heritage Act passed as part of the More Homes, More Choice Act (2019) came into effect on July 1, 2021. One of the major changes to the Act was the addition of certain timelines with regard to the designation of property under Section 29 of the Act. These are:

- A 90-day time limit to designate a property if the property is subject to an application for an official plan amendment, zoning by-law amendment or a plan of subdivision approval under the Planning Act
- A 120-day time limit for passing a designation by-law after a notice of intention to designate has been issued.

The amendments were intended to ensure that municipalities were efficient in their heritage planning programs. Specifically with regard to the 90-day limit related to Planning Act applications, the intention of this amendment was to ensure that municipalities did not raise heritage matters at a late stage of approval with regard to an application. However, Ontario Regulation 385/21 under the Act does recognize that there are situations where it is appropriate for these timelines to be extended or suspended and allows for Council and the applicant to mutually agree to an extension. The Act also contains other time limits for approvals with regard to applications to alter or demolish a heritage property or to repeal an individual designation by-law at the owner's request.

At present, any waiver of timelines must be agreed upon between Council and the applicant which require obtaining a recommendation from the Municipal Heritage Committee and then presenting a report to Council. This process is cumbersome and inefficient for both the City and the applicant. In order to make this process more efficient, staff are proposing that changes be made By-law 2019-154 which delegates authority to staff to approve certain types of applications made under Sections 33 and 42 of the Ontario Heritage Act. The proposed changes to the by-law would insert a new section into the by-law to both allow the Director of Development Services, or designate, to negotiate timeline extensions with applicants making applications under both Planning Act, where they relate to historic properties, and Ontario Heritage Act. Staff are also suggesting that an additional section be added into the by-law to allow the Director to execute and make amendments to Heritage Easement Agreements.

Rationale:

The proposed amendments to By-law 2019-154 are intended to address three specific items under the Ontario Heritage Act, which are outlined below. In general, the intention of the amendments is to better align the City's Heritage and Planning applications processes by allowing for flexibility within the heritage approval process to better correspond with related Planning Act applications. It is anticipated that these changes will assist staff with providing better and more streamlined customer service when addressing Planning applications that involve a property with cultural heritage value. Staff feel that the delegated authority by-law is the most appropriate place to address these matters as they align with the intention of the by-law to provide better and more streamlined service delivery with regard to applications made relating to historic properties. The proposed amendments still require the applicant to agree to any proposed timeline extensions and the City may not unilaterally extend or suspend the timelines established by the Act.

At present, the delegation of authority proposed in the by-law amendments have also been enacted by the City of Toronto through their Municipal Code. The City of Toronto adopted these changes in October 2020 in advance of the proclamation of the amendments to the Ontario Heritage Act in July 2021. Toronto's heritage planning staff have reported that the ability of staff to agree to the extension of timelines and negotiate and execute heritage easement agreements has been effective with addressing the changes made to the Act and has been appreciated by applicants who have been receptive to both the extension of the timelines and the ability to negotiate those directly with staff, as opposed to having to go to Council to have those extensions granted.

Prescribed Events and Circumstances

Ontario Regulation 385/21 stipulates that the 90-day limitation on designating a property after a prescribed event may be extended if the Council of the municipality and the applicant are in mutual agreement. There are no limits as to how long the timeline may be extended. Similarly, the Regulation also provides the requirement that a by-law be passed within 120 days of the issuance of a notice of intention to designate may be extended or waived with mutual agreement between Council and the applicant.

The intention of the ability to extend this timeframe is to allow for Planning Act applications which may include the designation of a property to proceed in tandem with the processes under Section 29 of the Ontario Heritage Act to designate an individual

property. For example, it would allow Council to receive a recommendation from the Planning Advisory Committee regarding an Official Plan Amendment at the same meeting as a recommendation from the Municipal Heritage Committee to designate a property. Similarly, an extended timeline allows for negotiating regarding the protection of heritage attributes with the applicant to align with the development being proposed on the site. While the designation of property as part of the approval of a Planning Act application is not a common process, it is something the City can consider in order to ensure that heritage assets are protected while promoting good investment and development.

As the Planning Act and Ontario Heritage Act processes are addressed through separate pieces of legislation, committees, and timeframes, the ability to provide flexibility within the Ontario Heritage Act processes allows for a more streamlined and predictable process for applicants and for the City to actively involve applicants in the process of protecting heritage assets in a productive and collaborative way. Delegating this authority to staff to negotiate an extension or waiver of a timeline is intended to provide more efficient service to applicants.

Application Timelines

Timelines for the approval, or denial, of heritage permit applications are established by Sections 32, 33, 34, and 42 of the Act and are 90-days from the issuance of a notice of complete application. However, the timelines have the potential to be extended through mutual agreement between the owner and the City. The proposed amendments to the delegated authority by-law would allow the extension of these timelines in writing by the Director of Development Services, or designate, in agreement with the applicant.

The majority of applications received by the City under the Ontario Heritage Act are alteration applications for properties designated under Part V of the Act and are processed within 3 to 5 business days by staff. An extension of timelines for approval is not necessary for the vast majority of applications. However, there may be situations where the ability to extend an approval timeline would be of importance to both the City and the applicant.

Staff are anticipating that the ability to extend these timelines would be used primarily when a heritage permit application is received in conjunction with a Planning Act application. In certain situations, it may be appropriate to extend the timeline for the approval in order to align the Ontario Heritage Act and Planning Act processes to make

the approvals more streamlined for the various staff, agencies, and committees involved with these types of application. Similarly, this will also assist in streamlining the process for applicants in order to receive approvals together and, should revisions need to be made, allow for the revisions and approvals processes to proceed in tandem. Staff particularly anticipate that this provision would be useful in the site plan approval process.

Heritage Easement Agreements

Section 37 of the Act allows for municipalities to enter into Heritage Easement Agreements with property owner to ensure the continued preservation of properties of cultural heritage value. In order to implement an easement agreement, Council must pass a by-law providing for entering into the easement and consult with the municipal heritage committee prior to doing so.

The Council-adopted policy CP2021-040, the Heritage Applications Policy, provides that the City may enter into a Heritage Easement Agreement with an owner when an application is made regarding an historic property under the Planning Act. Applications to which this provision applies include plans of subdivision, site plan approval, and other major development applications at the City's discretion. Easements may also be required when a heritage building is relocated, either within the same property or to a different property. Similarly, the policy stipulates that an easement be entered into for all properties participating in a heritage property tax relief program, as is required by Section 365.2 of the Municipal Act.

The proposed new section of the by-law addressing heritage easement agreements would delegate the authority to negotiate and execute an agreement to the Director of Development Services; it would also allow the Director to amend agreements, as required. A by-law and consultation with the Municipal Heritage Committee would still be required, but the ability of the Director to execute these agreements would expedite and streamline the process to implement them, particularly when they are tied to active Planning Act applications.

At present, the City does not have a heritage property tax relief program although its is recommended that one be implemented in the 2018 Strategic Community Improvement Plan. Should the City decide to implement such a program in future, the negotiation and execution of these agreements would also be delegated to the Director.

Other Alternatives Considered:

There are no recommended alternatives.

Financial/Operation Impacts:

These amendments have the potential to have financial impacts for the City by reducing the potential for appeals to the Ontario Land Tribunal regarding heritage properties as they relate to Planning Act applications.

Consultations:

Manager, Economic Development
Director of Development Services
Heritage Planners Network
City of Toronto Heritage Planning staff

Attachments:

Appendix A – Proposed Amendments to By-law 2019-154



Heritage Delegate
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(Acting) Department Head email: rholy@kawarthalakes.ca

(Acting) Department Head: Richard Holy, Acting Director of Development Services